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WALMART INC.

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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 HONG MCELROY, as Administrator
12 of the Estate of CURTIS MCELROY,

13 Plaintiff,

14 vs.

15 WAL-MART STORES, INC., d/b/a
Walmart, Inc., a Delaware corporation;
16 DOES 1 through X, inclusive; ROE
CORPORATIONS, I through X, inclusive,

17 Defendants.
18

Case No.: _____

**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION FROM
STATE COURT**

[28 U.S.C. §§ 1331, 1367, 1441, and 1446]

[FEDERAL QUESTION]

19 TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:

20 NOTICE IS HEREBY GIVEN that Defendant WALMART INC. ("Defendant") hereby
21 removes the above-entitled action from the Eighth Judicial District Court in and for the County of
22 Clark, State of Nevada, to the United States District Court for the District of Nevada pursuant to 28
23 U.S.C. §§ 1331, 1367, 1441(a) and (c), and 1446. This removal is based upon federal question
24 jurisdiction and is timely.

25 In support of this Notice of Removal, Defendant states to the Court as follows:

26 1. On December 27, 2019, an action was commenced in the Eighth Judicial District
27 Court of Clark County, Nevada, entitled HONG MCELROY, as Administrator of the Estate of
28

1 CURTIS MCELROY v. WAL-MART STORES, INC., d/b/a Walmart, Inc. a Delaware Corporation;
 2 DOES I through X, inclusive; ROE CORPORATIONS, I through X, inclusive, Dept. 24, Case
 3 Number A-19-807590-C. A true and correct copy of the Summons and Complaint is attached hereto
 4 as **Exhibit A**.

5 2. The first date upon which Defendant received notice of the Complaint was March 23,
 6 2020, when Defendant was served. Accordingly, this Notice of Removal is timely.

7 3. The Complaint alleges claims against Defendant that are based on federal law
 8 including discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42
 9 U.S.C. §2000e, *et seq.*

10 4. Accordingly, this action is a civil action for which this Court has original jurisdiction
 11 under 28 U.S.C. § 1331, which provides that United States district courts “shall have original
 12 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
 13 As noted, this action may be removed to this court pursuant to the provisions of 28 U.S.C. § 1441(a)
 14 because Plaintiff is asserting claims arising under federal law.

15 5. This Court also has supplemental jurisdiction over the Complaint’s state law claims in
 16 accordance with 28 U.S.C. § 1367.

17 6. Venue is proper in this Court as this is the court for the district and division
 18 embracing the place where the action is pending in state court, in accordance with 28 U.S.C. §§ 108
 19 and 1441(a).

20 7. The defendants designated as DOES I through X and ROE CORPORATIONS I
 21 through X are fictitious defendants, are not parties to this action, and have not been named or served.
 22 Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious names must be
 23 disregarded for the purpose of determining diversity jurisdiction and cannot destroy the diversity of
 24 citizenship between the parties in this action. *See McCabe v. Gen. Foods Corp.*, 811 F. 2d 1336,
 25 1339 (9th Cir. 1987) (proper to disregard unnamed Doe defendants for purposes of diversity);
 26 *Newcombe v. Adolf Coors Co.*, 157 F. 3d 686, 690-91 (9th Cir. 1998) (“district court was correct in
 27 only considering the domicile of the named defendants”). The Doe and Roe defendants, therefore,
 28 need not consent to this removal.

1 8. Concurrent with the filing of this Notice of Removal, Defendant is providing notice
2 of the removal to the Eighth Judicial District Court for Clark County, Nevada and to Plaintiff's
3 counsel of record. A copy of the Notice of Filing Notice of Removal is attached as **Exhibit B**.

4 WHEREFORE, Defendant prays that the above-referenced action now pending against it in
5 the Eighth Judicial District Court in and for the County of Clark, State of Nevada, be removed to this
6 Court.

7 Dated: April 22, 2020

8 Respectfully submitted,

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11 _____
12 Z. KATHRYN BRANSON, ESQ.
13 LITTLER MENDELSON, P.C.

14 Attorneys for Defendant
15 WALMART INC.
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PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169. On April 22, 2020, I served the within document(s):

**NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION
FROM STATE COURT**

☒ By **CM/ECF Filing** – Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system:

Eric D. Hone, Esq.
Jamie L. Zimmerman, Esq.
Moorea L. Katz, Esq.
H1 LAW GROUP
701 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074

Attorney for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 22, 2020, at Las Vegas, Nevada.

/s/ Maribel Rodriguez
Maribel Rodriguez